

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

**OHIO VALLEY ENVIRONMENTAL
COALITION, INC., and WEST
VIRGINIA HIGHLANDS
CONSERVANCY, INC.,**

Plaintiffs,

v.

CIVIL ACTION NO. 3:07-cv-00413

APOGEE COAL COMPANY, LLC,

Defendants.

PLAINTIFFS' WITNESS AND EXHIBIT LIST

Pursuant to the Court's July 14, 2010 Order, Plaintiffs submit the following lists of witnesses and exhibits in advance of the hearing set to commence on August 9, 2010.

Witnesses

1. John H. Koon, Ph. D.
John H. Koon & Associates
Suite 250
2200 Century Parkway
Atlanta, GA 30345
Dr. Koon will be presented as an expert on matters within his scientific and technical qualifications.
2. Mike Mickley, P.E., Ph. D.
Mickley & Associates
752 Gapter Road
Boulder, CO 80303
Dr. Mickley will be presented as an expert on matters within his scientific and technical qualifications.
3. Dr. Michael Kavanaugh
PO Box 1228
Volcano, HI 96785
Dr. Kavanaugh will be presented as an expert on matters within his scientific and technical qualifications.

4. Harry J. Potter, C.P.A.
President, Financial Investigation and Analysis
1924 South Utica, Suite 541
Tulsa, OK 74104
Mr. Potter will be presented as an expert on matters within his scientific and technical qualifications.
5. Phil Rooney
Commercial Developer
GE Water & Process Technologies
4636 Somerton Road
Trevose, PA 19053-6783
Mr. Rooney will be presented as an expert on matters within his scientific and technical qualifications.
6. John McHale
Patriot Coal Corporation
500 Lee Street, East, Suite 900
Charleston, WV 25301
7. Person Designated in Response to 30(b)(6) Subpoena
Consol Energy
1000 Consol Energy Drive
Canonsburg, PA 15317-6506
8. Mark Schroeder
Senior Vice President and Chief Financial Officer
Patriot Coal Corporation
12312 Olive Road Boulevard
St. Louis, MO 63101.

Depending on the factual development that occurs once Plaintiffs have deposed Defendant's witnesses regarding harm to aquatic life from Hobet Mining, LLC's violations of WV/NPDES Permit WV1022911, Plaintiffs may call one of the following individuals to rebut Defendant's assertions:

A. Dennis Lemly, Ph.D.
Department of Biology, Wake Forest University
Box 7325
Winston-Salem, NC 27109
Dr. Lemly will be presented as an expert on matters within his scientific and technical qualifications.

OR

Bryce F. Payne, Ph.D.

2940 Barndt Road
Telford, PA 19440

Dr. Payne will be presented as an expert on matters within his scientific and technical qualifications.

Exhibits

Because depositions in this case are continuing through August 4, 2010 under the compressed discovery schedule, Plaintiffs reserve the right to modify this Exhibit List based on the need to respond or rebut facts developed during the remaining depositions. Moreover, depositions of expert witnesses on the subject of harm to aquatic life as a result of violations of the selenium limits in WV/NPDES Permit WV1022911 are scheduled to be conducted on July 28 and 29, 2010. Because of that, without limiting their general reservation expressed above, Plaintiffs reserve the right to use as an exhibit at trial any document produced in discovery related to harm to aquatic life, any document used as an exhibit in a deposition of a harm witness, and any document or reference material needed to rebut Defendant's anticipated assertions regarding harm to aquatic life as a result of violations of WV/NPDES Permit WV1022911.

Plaintiffs identify the following specific documents as Exhibits for trial in this matter:¹

1. Patriot Coal Corporation's 10-Q Quarterly Report for the Second Quarter of 2010 Expected to be Filed with SEC In the First Week of August 2010
2. CV of John Koon, Ph.D.
3. CV of Mike Mickely, Ph.D.
4. CV of Michael Kavanaugh, Ph.D.
5. CV of Harry Potter

¹ In some instances, Exhibits are identified only by the initial Bates Number on the document, rather than by a range. In those instances, Plaintiffs intend to use the document and all pages in range, including attachments to emails associated with the expressly identified Bates Number.

6. CV of Dennis Lemly, Ph.D.
7. CV of Bryce Payne, Ph.D.
8. Transcripts of Depositions conducted in preparation for the August 9, 2010 hearing
9. Transcript of Deposition of Phil Rooney Under FRCP 32
10. Transcript of Deposition of Mark Schroeder Under FRCP 32, if Necessary
11. Demonstrative Map of Apogee Site
12. Photos from Site Visit on July 1, 2010 (Bates Nos. OVEC0469 to OVEC04705)
13. Demonstrative Exhibit Summarizing Difficult to Read Data in Potesta July 23, 2009 Selenium Cost Estimate
14. Timeline in Microsoft Project format for compliance at three Outfalls on Apogee WV/NPDES Permit WV1013599 and Outfall 001 on Hobet WV/NPDES Permit WV1022911
15. Table of Projected Costs of Compliance at Each Outfall
16. Table of Economic Benefit to Apogee of Contempt
17. Exhibit Summarizing Results of Modeling Conducted by Dr. Michael Mickley comparing effluent from Consolidation Coal Company to effluent from Apogee Coal Company
18. Amended Order 133C Issued to Consolidation Coal Company by WVDEP relating to chloride discharges
19. Detailed Project Schedule of Consolidation Coal Company's reverse osmosis chlorides treatment facility in Northern West Virginia (Exhibit to Owsiany Deposition)
20. "Draft Engineering Details and Proposed Compliance Schedule Monongahela River Facilities Water Treatment System" by Consolidation Coal Company and submitted to WVDEP on April 14, 2010 (Exhibit to Zeto Deposition)
21. Order No. M-09-070 of December 18, 2009 from WVDEP to Consolidation Coal Company (Exhibit to Zeto Deposition)
22. Order No. M-10-071 of April 23, 2010 from WVDEP to Consolidation Coal Company (Exhibit to Zeto Deposition)

23. “Appendix A Water Quality and Flow Data” Regarding Influent to Reverse Osmosis Project to be Constructed by Consolidation Coal Company (Exhibit to Owsiany Deposition)
24. July 23, 2009 Potesta Selenium Cost Estimate (Bates No. A3CON-00055)
25. January 2009 Draft Potesta Cost Estimate (Bates No. A2-001938 to A2-001942)
26. July 23, 2009 Email Chain “RE: patriot selenium” (Bates No. A3a-003949 to A3a-003952)
27. February 11, 2010 Email Chain “RE: Selenium” (Bates No. A3a-004143)
28. July 23, 2009 Duff&Phelps Valuation of Magnum Coal Co. (Bates No. A3CON-000002)
29. “Patriot Coal Corporation Selenium Compliance Cost Estimate – Former Magnum Operations” dated Sept. 2, 2008 (Bates No. A2-001952 to A2-001952)
30. July 16, 2009 Letter from Apogee Coal Company to WVDEP (Bates No. A3-001476)
31. January 23, 2009 CH2M HILL Technical Memorandum “Preliminary Watershed Flow Estimation with Diversion and Equalization Analysis – Patriot Coal, Apogee Site, Ruffner Mine Outfalls 001, 002, and 003” (Doc. # 136-21)
32. January 23, 2009 CH2M HILL Technical Memorandum “Selenium Conceptual Treatment Alternatives Evaluation – Patriot Coal, Apogee Site, Ruffner Mine Outfall 002 (Doc. # 136-22)
33. AACE International, “Cost Estimate Classification System – As Applied in Engineering, Procurement, and Construction for the Process Industries” (Doc. # 146-4 at 23)
34. Harrison et al., “Characterization and Treatment of Selenium in Water Discharged From Surface Coal Mining Operations in West Virginia” (2010) (Bates No. OVEC04223)
35. May 27, 2010 Letter from US EPA Region III to WVDEP (Bates No. OVEC04706)
36. May 27, 2010 Letter from US EPA Region III to WVDEP (Bates No. OVEC04709)
37. May 27, 2010 Letter from US EPA Region III to WVDEP (Bates No. OVEC04712)
38. Attachment 11-III to Apogee Coal Company Application to Modify Selenium Compliance Schedule in WV/NPDES Permit WV0099520

39. February 2009 Email Chain Regarding Matric Cost Estimates for Mud Lick and Slab Fork (Bates No. A3-032161)
40. July 2008 Letter from Apogee Coal Company to WVDEP (Bates No. A3-001480)
41. January 21, 2010 Email Chain Re June 2010 CH2M HILL NAMC Report (Bates No. A3-003761)
42. August 7, 2009 Email Re ABMet Costs (Bates No. A3-004706)
43. March 2010 Email Between Phil Rooney and John McHale (Bates No. A3-04722)
44. August 2009 Email Between Phil Rooney and John McHale (Bates No. A3-004724)
45. July 2009 Email from John McHale to GE (Bates No. A3-004806)
46. March 2010 Email from John McHale to Phil Rooney (Bates No. A3-004824)
47. August 2009 Email exchange between John McHale and Tim Harrison (Bates NO. A3-022502)
48. September 2009 Email Re Liberty/Patriot meeting (Bates No. A3-033448)
49. GE Reverse Osmosis Report (A3-055966)
50. April 22, 2010 Email from James Constant to John McHale Re EMS Training Se Portion, with attachment (Bates No. A3a-000091 to 000099).
51. April 9, 2010 Email from John McHale to Elizabeth Kraznicki Re EPA MTR Guidance, with attached Board OPS Presentation (Bates No. A3a-000101 to 000105).
52. July 24, 2009 Email Chain Re ABMet Design Basis Flow (Bates No. A3a-000185 to 000188).
53. July 24, 2009 Email Chain re ABMet Proposal, with attached ABMet System Results (Bates No. A3a-000189 to 000194).
54. August 12, 2009 Email Chain Re DMR Analysis, with attached SM44 & SM22 DMR Selenium Sampling History (Bates No. A3a-001499 et seq.
55. February 18, 2010 Email from John McHale to Kent Hartzog Re Selenium (Bates No. A3a-002958 to 002960).
56. October 7, 2009 Email from John McHale to James Constant Re GE Meeting with DEP (Bates No. A3a-003043).

57. April 27, 2010 Email from James Constant to John McHale Re Liberty Billboard Pictures, with attached cropped bill board (Bates No. A3a-003047 to 003049).
58. July 23, 2009 Email Chain Re ABMet Proposal (Bates No. A3a-003498 to 003500).
59. July 23, 2009 Email Chain Re ABMet Proposal (Bates No. A3a-003505 to 003507).
60. March 31, 2010 Email from John McHale to Jeffrey McCormick Re Revised Consent Decree Timetable, with attached letter and timetable (Bates No. A3a-004215 to 004217).
61. October 26, 2009 Email from John McHale to James Constant Re Selenium Schedule, with attached worksheet (Bates No. A3a-004242 to 004298).
62. January 6, 2009 Letter from Potesta to Patriot Re Letter Report—Review of Selenium Liability Cost Estimates for Magnum Coal Company Operations (Bates No. A3a-007398 to 7408).
63. February 11, 2009 Draft Selenium Site Assessment and Treatment Evaluation of the Mud River Basin by Potesta (Bates No. A3a-007550 to 007573).
64. July 2009 Email Exchange between Phil Rooney and John McHale (Bates No. A3a-009176)
65. March 2009 Email exchange between Phil Rooney and John McHale (Bates No. A3a-009179)
66. Sandy et al., “Review of Available Technologies for the Removal of Selenium from Water” (June 2010) (Bates No. A3-012188)
67. Photographs of Highway Billboard Advertisements for Liberty Hydrologic Systems (Bates No. A3a-003048 to A3a-003049)
68. November 2008 Letter from Liberty to John McHale (Bates No. A2-005498 to A2-005500)
69. December 2008 Affidavit of John Sawyer (Doc. # 127-2)
70. January 2009 Affidavit of John Sawyer (Doc. # 134-3)
71. February 2009 Affidavit of John Sawyer (Doc. # 136-3)
72. July 2009 Liberty SPS Proposal (Bates No. A3a-002044 to A3a-002046)
73. Mudlick Liberty SPS Data (Bates No. A3-000668 to A3-000840)

74. October 2009 Email Exchange Between James Constant and John McHale (Bates No. A3- 35048)
75. December 2009 Email Between Jon Pauley and Timothy Harrison (Bates No. A3-035791)
76. July 17, 2008 Letter from CH2M HILL to John McHale (previously entered into record in this matter as a sealed document by Defendant)
77. August 21, 2008 Letter from CH2M HILL to John McHale (previously entered into record in this matter as a sealed document by Defendant)
78. August 12, 2008 Technical Memorandum From CH2M HILL to John McHale, "Apogee Mine – Selenium Reduction Conceptual Approach and Scope of Work, Rev. 1 (previously entered into record in this matter as a sealed document by Defendant)
79. Patriot Coal Apogee Site Wastewater Sampling Plan (Doc. # 136-19)
80. November 21, 2008 Technical Memorandum from CH2M HILL to John McHale, "Screening Level Regulatory Analysis for Selenium in Surface Mine Water Discharge" (Doc. # 136-23)
81. October 9, 2008 CH2M HILL Kickoff Meeting Power Point Presentation
82. November 24, 2008 CH2M Hill Memorandum to John McHale, "CH2M HILL Memorandum to Support Patriot Coal Response to US District Court Order; Civil Action No. 3:07-cv-0413 (Doc. No. 121-2)
83. December 2008 Affidavit of Timothy Harrison (Doc. # 127-2)
84. January 19, 2009 Technical Memorandum, "Basis of Design Memorandum for Selenium Conceptual Treatment Alternatives for the Patriot Coal Apogee Site" (Doc. # 136-20)
85. February 16, 2009 Technical Memorandum from CH2M HILL to John McHale, "Evaluation of VSEP as a Conceptual Alternative for Selenium Treatment – Patriot Coal, Apogee Site, Ruffner Mine Outfall 002"
86. September 2, 2009 Technical Memorandum from CH2M HILL to John McHale, "Cost Estimates for Two Full-Scale ABMet System Options for Selenium Treatment – Patriot Coal, Hobet Site, Outfall 002 (Doc. # 144-3)
87. June 4, 2009 "New Logic VSEP Pilot Testing: Status Teleconference Call Summary" (Doc. # 143-6)

88. October 2009 FBR Lease with Envirogen (Doc. # 147-3)
89. October 9, 2009 Letter from CH2M HILL to John McHale Re Additional Selenium Research Projects (Doc. # 147-6)
90. October 21, 2009 "CH2M HILL Review Comments on New Logic Research's September 26, 2009 VSEP Pilot Study Report New Logic Research VSEP Pilot Study at Patriot Coal (Doc. # 146-1)
91. October 21, 2009 "CH2M HILL Review Comments on New Logic Research's 9/26/09 VSEP Series I Filtration System Budge Proposal No. 09-0926" (Doc. # 146-2)
92. November 6, 2009 "CH2M HILL Reject Management Evaluation for New Logic Research's VSEP System Reject Stream New Logic Research VSEP Pilot Study at Patriot Coal" (Doc. # 148-1)
93. November 20, 2009 "CH2M HILL Response to New Logic Comments on CH2M HILL Memorandum dated October 21, 2009 (Doc. # 146-4)
94. November 20, 2009 "Response to New Logic Research's Comments on CH2M HILL Reject Management Evaluation New Logic Research VSEP Pilot Study at Patriot Coal" (Doc. # 148-3)
95. "CH2M HILL Reject Management Evaluation for New Logic Research's VSEP System Reject Stream" (Doc. # 148-2)
96. November 2, 2009 "New Logic's Response to CH2M Hill's Comments on September 26, 2009 VSEP Pilot Study (Doc. # 146-3)
97. February 15, 2010 "Conceptual Approach and Sizing for Monitoring Storm Flows at Hobet Mine Site – Outfalls 001 and 041 (Doc. # 153-2)
98. February 2010 Pilot Test and Sampling Plan: Fluidized Bed Reactor (FBR) Pilot (Bates No. A3-003085 to A3-003364)
99. September 2009 Email Exchange Between John McHale and Tim Harrison (Bates No. A3-022581)
100. January 2010 Email Chain Between John McHale and Tim Harrison (Bates No. A3-003761 to A3-003762)
101. March 3, 2010 Power Point Presentation from SME Annual Meeting (Bates No. A3a-009796 to A3a-009816)

102. January 2010 Email “FW: Mud River report 30 Nov 09” and Attachment (Bates No. A3a-004952 to A3a-004998)
103. Paul Ziemkiewicz et al., “In Situ Field Scale Treatment of Selenium-Bearing Spoil Units” (Exhibit to Ziemkiewicz Deposition).
104. WV/NPDES Permit WV1013599, associated SMCRA permits, and permit files
105. WV/NPDES Permit WV1022911, associated SMCRA permits, and permit files
106. WV/NPDES Permit WV1017225, associated SMCRA permits, and permit files
107. WV/NPDES Permit WV0099392 , associated SMCRA permits, and permit files
108. WV/NPDES Permit WV1020889, associated SMCRA permits, and permit files
109. February 2008 Transcript of Deposition of Kenny Daniel
110. December 2009 Affidavit of Kenny Daniel (3:09-cv-1167, Doc. # 18-1)
111. Discharge Monitoring Reports for WV/NPDES Permits WV1013599, WV1022911, WV0099392, WV1017225, and WV1020889
112. December 2009 Affidavit of Paul Ziemkiewicz (3:09-cv-1167, Doc. # 18-4)
113. Exhibit to 2009 Affidavit of Paul Ziemkiewicz (3:09-cv-1167, Doc. # 18-5)
114. Data From 6- GMT Tanks on Slab Fork Outfall (Bates No. A3-000918 to A3001020)
115. Data From Titanic ZVI (Bates No. A3-000073 to A3-000195)
116. Transcript of Dr. Lovett’s Testimony to EQB in November 2007 (Exhibit to Lovett Deposition)
117. Transcript of Dr. Lovett’s Testimony to Federal Court in July 2008 (Exhibits to Lovett Deposition)
118. December 1, 2008 Lovett Affidavit (Doc. # 128)
119. Data on Hobet ZVI (Doc. # 147-9)
120. GMT, “Selenium Removal Using a Pumped High Density Elemental Iron System: Final Report” (Feb. 25, 2010) (Doc. # 153-1)
121. Lovett, R., “A Selenium Treatment System for Apogee Coal Co., LLC” June 2008 (Doc. # 95-2)

122. Lovett, R., "Designing A Mine Water Treatment System to Remove Selenium" March 4, 2008 (Doc. # 71-2)
123. "Demonstration of a High Density Fiber Zero Valent Iron Technology for Selenium Removal from Mine Drainage" May 2009 (Doc. # 143-3)
124. Lovett, R., "Description and Performance Evaluation of the Selenium Removal System at the Apogee-Titanic Site" (Doc. # 121-2)
125. Patriot Coal Corp. 2009 10K, Filed on 2/24/2010 (Exhibit to Schroeder Deposition)
126. 2009 Annual Report (Exhibit to Schroeder Deposition)
127. Patriot Coal Corporation Form 8-K Filed on 4/26/2010 (Exhibit to Schroeder Deposition)
128. Patriot Coal Corp. Prospectus Filed Pursuant to Rule 424(b)(2) (Exhibit to Schroeder Deposition)
129. August 2009 Email Between John McHale and Lawrence Bell and attachments (Bates No. A3a-003807 to A3a-003834)
130. December 2008 Email and Attachments Between John McHale and James Crawford (Bates No. A2-001943 to A2-001946)
131. June 2010 Power Point "Financial Community Presentation" (Exhibit to Schroeder Deposition)
132. Patriot Coal Corp. 10-Q for the First Quarter 2010 (Exhibit to Schroeder Deposition)
133. CH2M HILL "Big Bear Area Regional Wastewater Agency Concentrate Management Study" April 2006 (Bates No. A3a-232543 to A3a-232642)
134. July 22, 2010 "Final Report: Fluidized Bed Reactor Pilot Study" (provided by Defendant in discovery, no Bates Number)
135. May 11, 2010 Email from James Constant to Kevin Baker Re Information for Impoundment Designs for Selenium Case (Bates No. A3-001418)
136. August 19, 2009 Email from James Constant to John McHale Re Se Info, with attached "Evaluation of Treatment Options to Reduce Water-Borne Selenium at Coal Mines in West Central Alberta" (Bates No. A3a-006142 to 006182)

Respectfully submitted,

/s/ Derek O. Teaney

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CERTIFICATE OF SERVICE

I certify that on July 23 2010, I electronically filed the foregoing using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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